

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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MING KAN, *on behalf of himself and  
those similarly situated,*

**MEMORANDUM AND ORDER**

Plaintiff,

Case No. 1:19-cv-00298-FB-SJB

-against-

2317 OMIYA SUSHI, INC., d/b/a  
OMIYA SUSHI, OMIYA SUSHI II,  
INC., d/b/a OMIYA SUSHI, PHUI PHUI  
WOO, YAT KHOW WOO, a/k/a “BEN”,  
and YAO QIN FENG,

Defendant.

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**BLOCK, Senior District Judge:**

On April 5, 2021, Magistrate Judge Sanket Bulsara issued a Report and Recommendation (“R&R”), recommending that the pending “motion for default judgment be denied without prejudice to renewal upon resolution of the case against the Appearing Defendants.” *See* ECF No. 56 at 10. Judge Bulsara noted that controlling precedent from the United States Supreme Court counsels against entry of a default judgment against one defendant in a multiple defendant case where the defendants are alleged to be jointly liable. *See id.* at 4; *see also Frow v. De La Vega*, 82 U.S. 552, 554 (1872). This is because granting the relief sought runs the risk of

inconsistent judgments. The R&R stated that failure to object within fourteen days of the date of the R&R would preclude further review. No objections were filed.

If clear notice has been given of the consequences of failing to object and there are no objections, the Court may adopt the R&R without de novo review. *See Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”) (internal citations omitted). The Court will excuse the failure to object and conduct de novo review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000). No such error appears in Magistrate Judge Bulsara’s thorough and well-written decision. Accordingly, the Court adopts the R&R. The motion for default judgment is denied without prejudice subject to renewal upon resolution of the case against the appearing defendants.

**SO ORDERED.**

/S/ Frederic Block  
FREDERIC BLOCK  
Senior United States District Judge

Brooklyn, New York  
June 15, 2021